

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3687 of 1989

For Approval and Signature:

Hon'ble MR.JUSTICE R.K.ABICHANDANI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
5. Whether it is to be circulated to the Civil Judge? : NO

KANTILAL GANGARAM PATEL

Versus

STATE OF GUJARAT

Appearance:

MR NK MAJMUDAR for Petitioners

MR PREMAL JOSHI, AGP for Respondent No. 1, 2

CORAM : MR.JUSTICE R.K.ABICHANDANI

Date of decision: 08/12/2000

ORAL JUDGEMENT

1. The petitioners have challenged the orders at Annexure 'A' and 'B' to the petition, by which the auction in which the bids of the petitioners were accepted by the Mamlatdar in respect of the plots in question, was cancelled.

2. According to the petitioners, they had bid for the plots which were put in auction in Gandhinagar pursuant to the notification for auction which was published on 28/8/1985. In the auction conducted on 17/12/1985, there were several bidders and the rates offered by the petitioners constituted the highest offers in respect of the plots in question. Therefore, the Collector was bound to confirm the same. It is contended that the Collector arbitrarily and without any reason for doing so, cancelled the auction. The revision application filed against the decision of the Collector came to be rejected by the State Government by the impugned order at Annexure 'B' to the petition.

3. Under Sec. 179 of the Bombay Land Revenue Code, the Collector is empowered to set aside the auction sale if he has a reason to think that the sale ought to be set aside on some grounds. He is required to record reasons in writing for setting aside the auction sale. In the present case, the Collector, by his detailed orders, set aside the sale in respect of these plots. By analyzing the bids, he came to a conclusion that those who have participated in the auction seemed to have acted in collusion and a cartel was formed. It was held that the price which was offered was much lower than the price which was realized in a very recent auction conducted in the same area. The Collector, therefore, held that confirming the sale was not in the interest of the State. The revisional authority, after hearing the concerned parties, made a detailed order confirming the decision of the Collector. It is clear from the well reasoned order of the revisional authority that there was justification for not confirming the auction sale in respect of these plots. In para 4 of the revisional order, the authority took into account the fewer number of auction bidders, lack of applicability of mind in fixing the upset price, lack of adequate publicity to the auction and insufficient competition for holding that there was a possibility of collusion, as held by the Collector in making the bids. In para 5 of the revisional order, it was noted that the fact that, as recent as on 15th October 1985, the price of Rs.442=00 per sq. mtr. was realized was admitted by the applicant himself. It was held that the offers of the petitioners would show that either release of plots suffered from want of careful consideration amounting to total disregard of the State's interests, or that handful persons were able to manipulate the things in a manner which prevented others from bidding, leading to collusion and lack of fair competition. It was held that the grounds given by the

Collector for refusing to confirm the sale were therefore proper. It was also noted that, as per condition No.4 of the notification of auction sale, which condition was read out at the time of auction and was binding on the participants, the sale was subject to confirmation.

4. It is clear that, before the sale was confirmed, no right accrued in favour of the bidders and as contemplated by section 180 of the Code, in cases where the sale of any property was not confirmed, the purchaser was only entitled to receive back his deposit or purchase money. It cannot be said that the Collector had exercised his discretion of not confirming the sale in an arbitrary manner. There have been valid reasons which are articulated in support of cancellation of the auction sale. Since no accrued right of the petitioner was affected, there was no question of giving any hearing to the petitioners in the matter before refusing to confirm the auction sale. In any event, the contention of the petitioners have been elaborately considered by the revisional authority which has given cogent reasons while confirming the order of the Collector. The authorities have acted in lawful exercise of their jurisdiction and have not in any manner violated any of the fundamental rights of the petitioners. There is therefore no warrant for interference with the impugned orders.

5. The petition is, therefore, rejected. Rule is discharged with no orders as to costs.

6. At this stage, learned counsel for the petitioners states that if the deposits made by the petitioners are not refunded to them as per section 180 of the Code, they should be refunded. Needless to say that, if the amounts have not been refunded to the petitioners, they should be immediately refunded to the petitioners u/s 180 of the Code.

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